

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
04/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0781-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Jean G. Kahn Trust; LIRBM LLC

CASE 43B-0781-R-2022
43B 25657-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

This remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

On October 18, 2022 the Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA was issued setting a November 18, 2022 deadline for Jean G. Kahn Trust and LJRBM LLC to contact the Bozeman Regional DNRC Office ["DNRC"] and a January 18, 2023 deadline to file documentation resolving the issue remark. Nothing was filed by Jean G. Kahn Trust and LJRBM LLC.

On January 30, 2023 the DNRC Water Resources Specialist Mary Crable filed a No Response Memorandum stating that neither claimant ever contacted her. She reports that she reviewed the claim and recommends a change to the point of diversion legal description. The February 1, 2023 Order Setting Filing Deadline states:

Under Section 85-2-248(9)(b), MCA, when a claimant fails to comply with an Order issued by the Water Court concerning resolution of an issue remark, the Court can amend the claim to conform it to information obtained by the Court such as the DNRC No Response Memorandum.

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The DNRC No Response Memorandum recommends the point of diversion legal description be amended from the SWSESE section 28, T1S, R10E, PARK to the NWNENE section 31, T1S, R10E, PARK. Therefore, it is

ORDERED that the deadline for Jean G. Kahn Trust and LJRBM LLC to show cause in writing why the Court should not proceed with amending claim 43B 25657-00 as detailed above pursuant to section 85-2-248(9)(a), MCA, is **March 1, 2023**. If nothing is filed by March 1, 2023, the Court will proceed with amending the claim as detailed above.

On February 8, 2023 the claimants filed a Response. On February 9, 2023 Ms. Crable filed a Correction Memorandum stating that Larry Hance, on behalf of LJRBM LLC, contacted her to discuss the DNRC Memorandum, that Mr. Hance noted an error in the section number, and she revised her recommendation to correct that error. These settlement documents are viewable

in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the SWSESE section 28, T1S, R10E, PARK. The legal description should be the NWNENE section 33, T1S, R10E, PARK. The issue remark should be removed as resolved.

CONCLUSION OF LAW

The information provided by the DNRC and the claimants is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Jean G. Kahn Trust
1285 Stonegate Dr
Bozeman, MT 59715-5900

LIRBM LLC
6946 Sperry Street
Dallas, TX 75214

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 25657-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KAHN, JEAN G. TRUST
1285 STONEGATE DR
BOZEMAN, MT 59715 5900

LJRBMLLC
6946 SPERRY STREET
DALLAS, TX 75214

Priority Date: AUGUST 21, 1961

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 341.09 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 20.00

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENE	33	1S	10E	PARK

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15.00		SESE	28	1S	10E	PARK
2	5.00		E2SWSE	28	1S	10E	PARK

Total: 20.00